

 **David Malcolm**
22/03/02 10:30

To: Linda Devlin/OFMDFM/DFP@DFP
cc:
Subject: COR 164/02 - EMERGENCY CONTRACEPTIVE

Jim
NIO have been chasing.
I've passed David's message on to them. (9)
LD 744.
LD 22/3
Barbara B
3/3/27

Linda

This is currently with the Minister and her Private Office hope she will clear it later today for issue to us. They have been told it is now red hot! I will ensure you are side copied once it arrives.

David

..... Forwarded by David Malcolm/OFMDFM/DFP on 22/03/02 10:28

OFFICE OF THE FIRST MINISTER AND DEPUTY FIRST MINISTER

Parliament Buildings, Stormont, Belfast

URGENT

CORRESPONDENCE

Reference: COR/164/2002

Raised By: John Reid MP

Subject: COR 164/02 - EMERGENCY CONTRACEPTIVE

Referred To:

Date Referred:

PS/MS DE BRUN

13/03/2002

ACTION REQUIRED

Please provide advice and a draft reply for signature by the First Minister and Deputy First Minister.

Please enter any additional text if required:

To be with Private Office not later than 18/03/2002 asap

For further information etc. contact:

Diane Smyth

Private Office

Parliament Buildings Tel:- 028 9052 1383

Copied To For Information

PS/FM&DFM

PS/Mr Loughran

PS/PERM.SEC (DHSSPS)

Will Haire

Stephen Grimason

John McKervill

Bill Smith

Wesley Shannon

Mark Neale

David Campbell

Hugh Logue

Brian Barrington

David McNarry

Damien McAteer

Mark Larmour

Alison Coey

Aidan Cassidy

Paddy Cullen

Dara Cosgrove

Michael Henderson

Anne Rogers

Scanned Document:



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SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon David Trimble MP MLA
First Minister
Parliament Buildings
Stormont
BELFAST
BT4 3XX

NORTHERN IRELAND OFFICE
11 MILLBANK
LONDON
SW1P 4PN



11 March 2002

Dear David,

EMERGENCY CONTRACEPTION

Summary

I am writing to consult you urgently about my proposed approach to dealing with circumstances that might arise in relation to the availability of some forms of contraception in Northern Ireland.

As you may be aware, the Order made in 2000 allowing over-the-counter sales of emergency contraception has been challenged in England by means of a judicial review. Although Government is confident that the challenge will not be successful, an adverse judgment depending on its precise terms could have a profound effect on the provision of contraception generally. The Department of Health is therefore making contingency plans against that eventuality. These involve amendment to the Offences Against the Person Act 1861, an Act which applies to Northern Ireland as well as England and Wales.

My purpose in writing is to seek your views on the possible amendment of the 1861 Act and its extension to Northern Ireland. I believe that there is no practical alternative to the amending Bill if we wish to maintain the position





with respect to contraception that has existed since at least 1983 (when the then Attorney General advised that prevention of implantation which is brought about by emergency contraceptive products does not amount to procuring a miscarriage under Sections 58 and 59 of the 1861 Act).

However, I am conscious that policy in relation to contraception is a devolved matter and I would welcome any comments on the proposal for emergency legislation. Because judgment may be given before Easter, I would be grateful to receive your comments by 21 March.

Background

Last year, the Society for the Protection of the Unborn Child (SPUC) applied for a judicial review of the Order made in 2000 by the Secretary of State for Health permitting the over-the-counter sale of the "morning after" pill in pharmacies. SPUC contends that this type of contraception is a method of abortion, and that anyone administering or supplying it is guilty of a criminal offence under section 58 or 59 of the Offences Against the Person Act 1861.

The Government is confident that the judge will decide in the Department of Health's favour. However, should the judgment be adverse, the implications for existing policy and practice could be far-reaching. Depending on the precise nature of an adverse judgment, most commonly-used contraceptives except condoms could **immediately** fall foul of the 1861 Act and **anyone selling, distributing or using such contraceptives would be guilty of a criminal offence.**

The Department of Health has prepared contingency plans in case there is an adverse judgment. A Bill has been drafted that would amend the 1861 Act to restore the legal position in England and Wales in relation to contraception to that which is currently thought to exist. In effect the Bill





would confirm that a miscarriage (or abortion) cannot be said to take place until an embryo has become implanted in the uterus. This would put beyond doubt the legality of contraceptive methods which prevent implantation.

An emergency Bill would be presented to Parliament within 24 hours of an adverse judgment, with the prospect of Royal Assent within 48 hours. It would have retrospective effect, and steps would be taken against the possibility of prosecutions during this short period. Although the 1861 Act does not extend to Scotland, suitable provision would be included in the emergency Bill to deliver a similar policy effect there.

The judge in the case has said he would deliver his judgment "around Easter" but while Parliament is sitting. Contingency planning is based on the possibility that the judgment will be given some days before the Easter recess begins on 27 March.

I understand Bairbre de Brun is a co-signatory of the 2000 Order being challenged, and the same range of contraceptives is available in Northern Ireland as in England and Wales. The relevant provisions of the Offences Against the Person Act 1861 apply in Northern Ireland as in England and Wales and, although the Abortion Act 1967 does not extend to Northern Ireland, I understand the same consequences of an adverse judgment would obtain here.

The policy on the availability of contraceptives is a matter for the devolved administration. My officials have been in contact with officials in Department of Health, Social Services and Public Safety about the matter. However, the 1861 Act is part of the criminal law and is thus my responsibility.



INVESTOR IN PEOPLE



NORTHERN IRELAND OFFICE
11 MILLBANK
LONDON
WC1R 4DP

Contraception and abortion are especially sensitive and delicate subjects in Northern Ireland. In relation to abortion, my predecessors and I have made it clear that the Government would not impose any change in the law in Northern Ireland, and that any change to the law on abortion could only come about with broad support from a cross-section of the people of Northern Ireland. I do not, however, regard the emergency Bill as being about abortion, so much as contraception. Moreover its purpose is to maintain law as it has been thought to exist since at least 1983 when the then Attorney General advised on the matter.

Against all this background, I believe there is no practical alternative for Northern Ireland but to join in the planned Bill by having it extend to Northern Ireland. Before arranging that formally, however, I should be very interested to receive any comments you may care to make. You will appreciate that our detailed plans need to be in place ahead of the judgment which may appear some days before Easter. **I should therefore be most grateful to receive your response by 21 March.**

Neil Myers

John Reid
JOHN REID

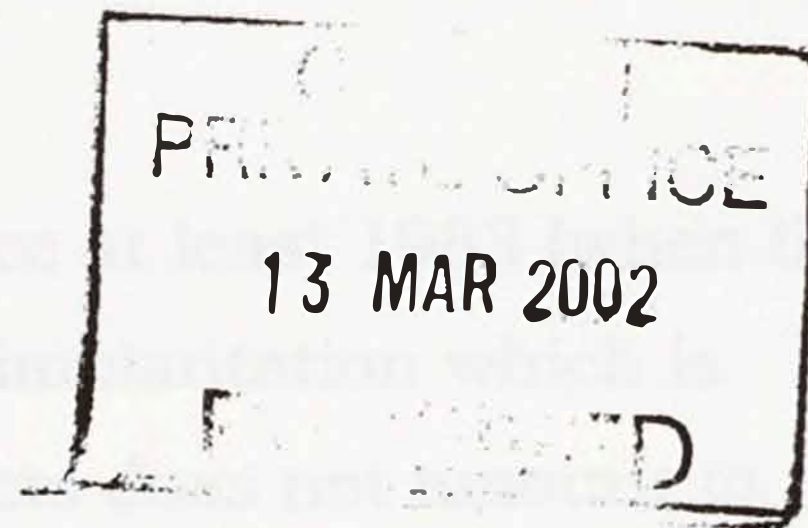


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NORTHERN IRELAND OFFICE
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SECRETARY OF STATE
FOR
NORTHERN IRELAND



Mr Mark Durkan MLA
Deputy First Minister
Parliament Buildings
Stormont
BELFAST
BT4 3XX

// March 2002

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Summary

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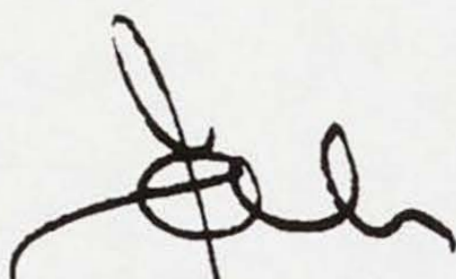
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Kind regards


JOHN REID

